

## REMARKS

Applicant respectfully thanks the Examiner for discussing the Application with Applicant's Attorney. The Examiner and Applicant's Attorney discussed whether or not a stationary stator nozzle is distinguishable and unobvious over a rotor blade, though an agreement on allowability was not reached. Applicant's remarks follow.

### Claim Rejections Under 35 U.S.C. §102(b)

Claims 1, 2, 3, 10-12 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,702,221 to Ortolano (Ortolano '221 hereinafter). Applicant's amended claims 1 and 10 claim in part:

“multiple stationary nozzle blades supported by a turbine stator”

Applicant respectfully points out that the multiple blades of the first embodiment referred to in Ortolano are “blades provided with suitable root portions which are disposed in a suitable peripheral groove in the rotor,” (column2, lines 47-49). Examiner states that the multiple blades 36 in Fig. 7 of Ortolano '221 correspond with the fourth embodiment of the disclosure. At column 4, lines 20-22, this fourth embodiment is described as “substantially similar to the first embodiment except for the differences that follow.” The differences that follow describe association of the blade cover 38 and 38a-b and arcuate segments 34 and 34a-b. No mention is made of the root portions of the blades 36 being disposed in anything other than the rotor, and Fig. 7 shows the unnumbered root portions disposed in the unnumbered rotor. Thus, referring to Fig. 7 and the description that the fourth embodiment is substantially similar to the first (with no mention of the root portions of the blades 36 being disposed anywhere besides the rotor), the multiple blades 36 of the fourth embodiment must also be blades that attach to the rotor. Being that these blades are attached to the rotor, they must rotate along with the rotor during turbine operation, rendering them non-stationary blades. Applicant's amended claims 1 and 10 include stationary nozzle blades (i.e. the portion 104 of the nozzle in Applicants figures that associates the dovetail segment 102 with the cover portion 106) supported by a turbine stator as an element, which Ortolano's '221 disclosure (disclosing moving rotor blades) fails to teach. Whether or not one of ordinary skill in the art could apply the vibratory stress solutions for rotating blades

disclosed in Ortolano '221 to the stiffening deterministic constraints and sealing against leakage in stationary nozzle blades claimed by Applicant, cannot be known. In addition, being that rotating blades and stationary nozzle blades are responsible for different functions in a turbine, there is no reasonable expectation for success in modifying nozzle blades to include the teachings of Ortolano '221.

As Ortolano '221 fails to teach every aspect of claims 1 and 10, either expressly or impliedly, Ortolano '221 does not anticipate claims 1 and 10. For at least the foregoing reasons, it is respectfully submitted that claim 1, claims 2-3 that depend therefrom, claim 10, and claims 11-12 that depend therefrom, are not anticipated by Ortolano '221.

#### Claim Rejections Under 35 U.S.C. §102(b) and 103(a)

Claim 5 has been rejected under 35 U.S.C. §102(b) and 103(a) as being anticipated/unpatentable by/over Ortolano '221. Applicant's amended claim 1 claims in part:

“multiple stationary nozzle blades supported by a turbine stator”

As was mentioned above, Applicant's amended claim 1 includes stationary nozzle blades as an element, which Ortolano's disclosure fails to teach. Since claim 5 depends from claim 1, Ortolano '221 fails to teach every aspect of claim 5, and thus, claim 5 is not anticipated by, or unpatentable over Ortolano '221.

Referring now to Examiner's assertion that claim 5 is a product by process claim including a product substantially the same or similar to the product of Ortolano, Applicant respectfully disagrees. According to the MPEP 2113, the structure implied by the process steps (these steps being “one of welded and brazed” in claim 5) should be considered when assessing the patentability of product by process claim over the prior art especially where, “the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product.” Referring particularly to *In re Garnero*, 412 F.2d, 276, 279, 162 USPQ 221, 223 (CCPA 1979), it was held that terms such as “welding” are capable of construction as structural limitations. Being that the claim 5 elements of welding and brazing are manufacturing process steps that differ from association via tenon as described in Ortolano '221, and would be

expected to impart a distinctive structural characteristics to the final product (i.e. absence of tenon and fusing of material), and being that “welding” is specifically supported by *Garnero* as a structural limitation, the product of Applicant’s claim 5 does include an unobvious difference to the product described in Ortolano ‘221. Thus, referring to Examiner’s product by process argument, Applicant’s claim 5 is patentable over, and not anticipated by Ortolano ‘221.

#### Claim Rejections Under 35 U.S.C. §103(a)

Claims 1-4, 10-13, and 15-19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,238,368 to Ortolano (Ortolano ‘368 hereinafter) in view of U.S. Patent No. 2,315,641 to Mosser (Mosser hereinafter). Applicant’s amended claims 1 and 10 claim in part:

“multiple stationary nozzle blades supported by a turbine stator”

Applicant respectfully points out that the multiple blade foils 12 referred to by the Examiner in Ortolano ‘368 are “turbine blades” (column 2, line 38) attached to a rotor 34 (Fig. 6). Being that these blades are attached to the rotor, they must rotate along with the rotor during turbine operation, rendering them non-stationary blades. Applicant further points out that in Mosser, the “row of blades 10” cited by the examiner is “carried by the rotor 11,” (page 1, column 1, lines 51-52), and must rotate along with the rotor during turbine operation, rendering them to also be non-stationary blades. Applicant’s amended claims 1 and 10 include stationary nozzle blades as an element, which the Ortolano ‘368 and Mosser disclosures (each disclosing moving rotor blades) fail to teach. Whether or not one of ordinary skill in the art could apply the vibratory stress solutions for rotating blades disclosed in Ortolano ‘368 and Mosser to the stiffening deterministic constraints and sealing against leakage in stationary nozzle blades claimed by Applicant, cannot be known. In addition, being that rotating blades and stationary nozzle blades are responsible for different functions in a turbine, there is no reasonable expectation for success in modifying nozzle blades to include the combined teachings of Ortolano ‘368 and Mosser.

As Ortolano '368 and Mosser (together) fail to teach every aspect of claims 1 and 10, these claims are not unpatentable over Ortolano '368 in view of Mosser. For at least the foregoing reasons, it is respectfully submitted that claim 1, claims 2-4 that depend therefrom, claim 10, and claims 11-13 and 15-19 that depend therefrom, are patentable over Ortolano '368 in view of Mosser.

Claims 4 and 13 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Ortolano '221 in view of Mosser, and claims 6-9 and 15-19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Ortolano '221 in view of Ortolano '368.

As discussed above, Applicant's amended claims 1 and 10 include stationary nozzle blades as an element, which Ortolano '221, Ortolano '368, and Mosser (each disclosing moving rotor blades) fail to teach. Since claims 4 and 6-9 depend from claim 1, and claims 13 and 15-19 depend from claim 10, Ortolano '221, Ortolano '368, and Mosser fail to teach every aspect of claims 4, 6-9, 13, and 15-19 and thus, these claims are not unpatentable over Ortolano '221 in view of Mosser, or over Ortolano '221 in view of Ortolano '368.

The Examiner made reference to Applicant's statement, "by teaching a tie band 16 that's purpose is to minimize vibratory stresses, Mosser actually teaches away from Applicant's overcover that will seal against leakage," (at the last sentence of page 9 of the February 23<sup>rd</sup>, 2006 amendment) in the latest action. It is noted herein that the intent of the statement was to indicate that there is no teaching of sealing against leakage in the Mosser reference, rather than the Examiner's professed understanding of the statement to mean that Applicant's integral covered nozzle grouping cannot minimize vibratory stresses. The statement was merely intended to distinguish Mosser's sole disclosed purpose of minimizing vibratory stresses from Applicant's configuration that at least one of stiffens deterministic constraints of said tips and seals against leakage.

Applicant respectfully asserts that all of the rejections are herein overcome. No new matter is added by way of the present Amendments or Remarks, as support is found throughout the original filed specification, claims, and drawings. Notice of Allowance is respectfully requested.

If the Examiner has any questions regarding the instantly submitted response, Applicant's attorney respectfully requests the courtesy of a telephone conference to discuss any matters in need of attention.

If there are any additional charges with respect to this response or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorney.

Respectfully submitted,

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By: \_\_\_\_\_

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